

**Shawna Senko**

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**From:** Vandiver, Denise <VANDIVER.DENISE@leg.state.fl.us>  
**Sent:** Tuesday, August 06, 2013 9:54 AM  
**To:** Filings@psc.state.fl.us  
**Cc:** Bart Fletcher; Andrew Maurey; Shannon Hudson; Sonica Bruce; Melissa L'Amoreaux; Stan Rieger; Jennifer Crawford; Suzanne Brownless; Martin P. McDonnell (marty@reuphlaw.com); ewart@niamerica.com; 'jrichards@pascocountyfl.net'; Reilly, Steve; Vandiver, Denise  
**Subject:** Docket No. 110257-WS; Application for increase in water and wastewater rates in Seminole County by Sanlando Utilities Corporation  
**Attachments:** Second Letter - Issues for Staff on Ni Florida.pdf

a. The full name, address, telephone number, and e-mail address of the person responsible for the electronic filing:

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b. The docket number and title if filed in an existing docket:

Docket No. 130010-WS  
Application for increase in water rates in Lee County and wastewater rates in Pasco by Ni Florida, LLC

c. The name of the party on whose behalf the document is filed:

Office of Public Counsel

d. The total number of pages in the attached document:

10 pages

e. A brief but complete description of the attached document:

Cover letter with attached list of OPC issues and concerns



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OFFICE OF PUBLIC COUNSEL**

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**WILL WEATHERFORD**  
SPEAKER OF THE HOUSE OF  
REPRESENTATIVES

**DON GAETZ**  
PRESIDENT OF THE SENATE

J.R. Kelly  
Public Counsel

August 6, 2013

Ann Cole, Director  
Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Re: Docket No. 130010-WS; Application for increase in water rates in Lee County and wastewater rates in Pasco by Ni Florida, LLC.

Dear Ms. Cole:

Attached is a list of issues that the Office of Public Counsel has prepared to identify concerns we have with the MFRs and other information filed by Ni Florida, LLC to support its requested rate increase. We are submitting this letter in an effort to be up front with our concerns and allow the staff and utility sufficient time to review our concerns and ask for any additional information that might be needed. If you should have any questions, please feel free to call or e-mail me.

Respectfully submitted,

*s/ Denise N. Vandiver*

Denise N. Vandiver  
Legislative Analyst

c: Division of Accounting & Finance (Maurey, Fletcher)	Rutledge Ecenia
Division of Economics (Hudson, Bruce)	Mr. Martin P. McDonnell, Esquire
Division of Engineering (L'Amoreaux, Rieger)	
Office of the General Counsel (Crawford, Brownless)	Pasco County Board of County Commissioners Joseph D. Richards, Esquire
Office of Public Counsel (Reilly)	Ni Florida, LLC Mr. Edward R. Wallace

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- As we discussed in our letter dated April 24, 2013, we note that the comparative Balance Sheet (Schedule A-18 and A-19) shows a significant balance in an account titled "Investments in Associated Companies". Our schedule below shows the ending balances for the test year for the three balance sheet accounts that relate to funds between Ni Florida and Associated Companies. The net of these three accounts is almost \$1.4 million which translates to an equivalent of 42% of the utility adjusted rate base. We draw no conclusions at this time until staff has heard from the customers and an engineer has completed a review of the systems to determine whether the utility has maintained its systems adequately or has diverted funds through these accounts.

	<u>9/30/2012</u>
Accts Rec Assoc Companies	1,239,747
Investments in Assoc Companies	2,519,917
Accts Pay Assoc Companies	<u>2,371,780</u>
Net Recble / (Payable)	<u>1,387,884</u>
Water Rate Base	310,758
Sewer Rate Base	<u>2,944,473</u>
Total Rate Base	<u>3,255,231</u>
Net Investment as % of RB	<u>42.6%</u>

Contractual Services – Management Fee

- The staff audit shows a reduction in the amount paid to Florida Utility Group. Audit Finding 9 reflects a decrease of \$558 to water and \$2,053 to wastewater. As this is a change that will impact future expenses, we agree with the staff audit that these expenses should be reduced.

Contractual Services – Other

- The utility requested a pro forma adjustment of \$100,000 to reflect "new annual line cleaning" program. Audit Finding 6 discusses this pro forma item but defers to the staff analyst, pending additional support that the utility plans to submit. As the audit report points out, the Commission allowed the utility an expense in the last rate case of \$143,474 for inflow and infiltration repairs. The chart below summarizes the amounts spent by the utility in 2009, 2010, 2011, and the test year. The audit report discloses the total spent in this account while the chart below indicates the total broken down between the various functions. The I&I function shows extreme variability. In 2009, the utility spent 94,403.95, while it spent zero in 2010, \$4,721.57 in 2011, and \$44,104.07 in the test year. The majority of the test year amount is from two significant invoices in May that total \$35,530 and three smaller invoices for the

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remaining \$8,574. We are concerned that the utility has previously requested funds for this program and has not proven its intent to spend the requested amount. In fact, the average spent in 2009, 2010, 2011, and the test year is only \$36,988. We pointed out in Issue 1 that the utility has invested substantial funds in an associated company. This issue is important to us for reasons such as this, where a utility sends utility funds to associated companies instead of investing these funds in an important program such as this I&I program that the utility has previously committed to fund.

However, we agree that a healthy collection system is vital to the utility and if the Commission determines that the utility should be allowed \$100,000 for an I&I program, we believe that the Commission should recognize that the utility spent \$44,000 in the test year and therefore the annual expense only needs to be increased by \$56,000, rather than the entire \$100,000. Any pro forma expense allowed should be based on a written plan by the utility detailing the specific work proposed for each of the 3 – 5 future years.

	12/31/2009 Balance	12/31/2010 Balance	Balance 12/31/2011	TY Expenses
<b>736 · Contract Services - Other</b>	119,497.09	120,845.11	50,272.23	61,628.41
<b>736.1 · Contract Services - I &amp; I</b>	94,403.95		4,721.57	44,104.07
<b>736.2 · Contract Labor</b>	11,190.90	12,559.85	15,950.85	15,106.78
<b>736.3 · Customer Work Orders</b>	(7,504.06)	(399.22)	(463.71)	547.05
<b>736.4 · Mission Unit Monitoring Svc</b>		563.40	3,332.16	3,115.08
	<u>217,587.88</u>	<u>133,569.14</u>	<u>73,813.10</u>	<u>124,501.39</u>

Miscellaneous Expenses

4. The Miscellaneous Expense account includes the allocations from Ni America Capital Management, LLC and Ni America Operating, LLC. The last rate case identified total allocated overhead of \$2,866,039<sup>1</sup>. Schedule B-12 of the current MFR's indicates total allocated overhead of \$3,312,516. In the last order, the Commission made adjustments to the amount to be allocated for salaries related to acquisition activities and due diligence expenses, the equity sponsor fee, and various expenses. We address our position on these items in the current case below.

- a. Salaries related to acquisition activities and due diligence expenses: In the last rate case order, the Commission removed the amount of salaries related to the acquisition activity for Ni America. In addition, the Commission stated that it is their practice that the costs incurred for acquisitions or transfers that are not related to the jurisdictional utility be recorded as below-the-line costs of the shareholder. The Commission removed the entire expense. In the current docket, the staff audit of the affiliate transactions identified \$495,293.36 in salaries, benefits, and other due diligence costs that should be removed from costs allocated to the utilities. (Audit Finding 4 adjusted

<sup>1</sup> See Order No. PSC-11-0199-PAA-WU, issued April 22, 2011, in Docket No. 100149-WU, In re: Application for increase in water rates in Lee County by Ni Florida, LLC.

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\$405,293.36 which reflects a netting of \$90,000 that the utility made in the MFR's.) This is a long-standing practice of the Commission and we agree that these costs should be removed.

- b. Equity sponsor fee: In the last rate case order, the Commission found that the Utility's share of the equity sponsor fee is recovered through the approved ROE and removed the entire fee from the expenses. In the current docket, the staff audit of the affiliate transactions identified \$315,000 for the equity sponsor fee recorded in the test year. The staff audit further identified various other expenses related to the equity sponsor fee. Our review of the expenses found that some listed expenses were outside of the test year. Our adjusted amount is shown below. We believe that the equity sponsor fee and the related expenses should be removed from test year expenses.

Account	Description	Total Amount	Water 1.89%	Wastewater 7.22%
632.0	Consulting and Tax	\$ 2,730.00	\$ 51.60	\$ 197.11
633.0	Davis and Polk Borrowing Group Structure	\$ 6,256.50	\$ 118.25	\$ 451.72
650.0	Overtime and Taxis	\$ 15.90	\$ 0.30	\$ 1.15
675.4	Statutory Representation Fees	\$ 1,440.45	\$ 27.22	\$ 104.00
675.3	Meals and Entertainment	\$ 1,722.69	\$ 32.56	\$ 124.38
633.0	Legal Davis and Polk	\$ 8,479.00	\$ 160.25	\$ 612.18
650.0	Airfare	\$ 1,186.35	\$ 22.42	\$ 85.65
675.4	Business License Fees	\$ 414.45	\$ 7.83	\$ 29.92
675.3	Meals, Travel and Entertainment	\$ 3,657.82	\$ 69.13	\$ 264.09

- c. Various expenses: In the last rate case order, the Commission found that the following expenses were not related to the Utility or were non-recurring: travel to utilities in other states, shipping expenses to utilities in other states, gifts for employees, legal expenses relating to utilities in other states, background checks, apartment fees, travel for interviews, and CPA study materials. While the last order does not detail the specific accounts adjusted, we believe the following similar items should be examined in the current rate case.
- i. Finding 7 in the staff audit of the affiliate transactions identified an adjustment to remove transportation charges for other states from the Florida allocation and include Florida transportation at 100%. Our review of this adjustment indicates it also includes a similar adjustment for legal fees. We agree with this adjustment.
  - ii. In the prior rate case, the utility indicated its rent expense include Ni America's corporate office in Houston, Texas, where all employees are housed, except for one. One employee rents space in College Station, Texas where he lives. The monthly rent for the single office space he rents is \$750/month or \$9,000 for the test year. We believe that it is not reasonable for the utility to incur additional rent for one employee. Therefore, we believe that this expense should be removed from the allocation.
  - iii. The current test year expenses include \$20,696.70 in Account 675.10 – Education & Seminars. The chart below summarizes the amounts charged to this account. We believe that the Commission should

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review each of these expenses and remove those expenses that are unrelated to the provision of water and wastewater service from the expenses allocated to the Florida systems.

<u>Date</u>	<u>Description</u>	<u>Amount</u>
12/9/11	Microsoft office training transition to 2010	1,800.00
7/10/12	July 2012 Visa - Eric (Water & Wastewater Mgmt Book)	87.29
9/1/12	WEASC Workshop Laboratory Rules Update - Craig Sherwood (South Carolina)	75.00
9/28/12	CPE Courses for E. Wallace, M. Ashfield, and B. Wilkinson	411.95
1/31/12	01/2012 Amex - Donna (2012 CPA Exam Review)	3,465.52
5/31/12	Tuition for Summer I Session - Texas A&M University - Kevin Binder	1,171.48
7/24/12	Texas A&M Tuition - Summer II Session	1,120.19
		2,291.67
12/20/11	Education Expenses	269.90
1/5/12	Tuition and related expenses for classes at USC for her MBA	8,009.83
2/6/12	Capstone Simulation Software for Strategic Management Class	53.99
4/13/12	Tuition for additional class at USC and Accounting book	2,021.90
4/23/12	Required Cases for Classes	92.95
4/23/12	Required Simulation package for Classes	39.95
7/11/12	Tuition for USC PMBA - Lauren Burgess	1,917.00
8/10/12	Aug 2012 Visa - Lauren (Books for School)	159.75
		12,565.27
	<b>Total 675.10 - Education &amp; Seminars</b>	<b>20,696.70</b>

iv. The current test year expenses include \$46,885.49 in Account 675.9 – Other Miscellaneous. The chart below summarizes the amounts

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charged to this account. We believe that the Commission should remove those expenses that are unrelated to the provision of water and wastewater service from the recoverable expenses allocated to the Florida systems. We are also concerned with the level of relocation expenses that are included in the test year allocation. Finding 8 in the staff audit of the affiliate transactions identified \$34,500 as a cost to relocate an Operation manager to South Carolina. We believe that the \$1,653.82 related to the same manager should also be removed. The remaining amount of relocation expense is for a move that was outside the test year. The audit included a statement from the utility that the utility "may pay other relocation fees in the future." Unless the utility can show a pattern of relocation fees that supports an average expense per year, we do not believe that this expense should be included in the allocation to the Florida systems.

<u>Date</u>	<u>Description</u>	<u>Amount</u>
12/21/2011	Reimbursement for Towing Charge during business lunch.	203.39
12/23/2011	Holiday Arrangements for Ni America Christmas party	344.24
12/31/2011	12/2011 Amex - Carey (Christmas Gifts for Employees)	345.52
03/31/2012	03/2012 Amex - Carey (Flowers for Donna)	124.49
05/10/2012	05/2012 Visa - Carey (Flowers and Gift for Admin Prof Day)	376.65
06/10/2012	06/2012 Visa - Cory (Edible Arrangements for Carey's B-Day)	129.90
06/10/2012	06/2012 Visa - Carey (B-Day Caske for Cory)	27.99
07/10/2012	July 2012 Visa - Carey (Plants and Pedals - Flowers for Emp B-Day)	124.49
		<u>1,129.04</u>
12/31/2011	To Increase Accrual for Mark Daday Relocation/Closing Costs (Est \$34,175).	9,175.00
12/31/2011	To accrue relocation expense for Craig Sherwood.	34,500.00
05/18/2012	Reversal of Mark Daday's Accrued Closing Cost (Paid by Ni Cap Mgmt)	(120.00)
09/01/2012	Reimbursement of Craig Sherwood's relocation cost	1,653.82
		<u>45,208.82</u>
	Total 675.9 - Other Miscellaneous	<u>46,885.49</u>

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5. The staff audit of the affiliate transactions made several other adjustments that we agree should be made:
  - a. Finding 1 includes the full value of the Customer Deposits in the calculation of the rate of return. The utility appears to have included customer deposits in the adjustment to reconcile the capital structure to rate base. Commission policy is to bring forward the full amount of customer deposits and reconcile only the debt and equity amounts.
  - b. Finding 3 addresses two issues. The first is to correct a \$9,000 error in the general ledger for capitalized wages. The second is to recognize that some wages included in the salaries and benefits expenses are for officers and employees that only work on the South Carolina system. We support the adjustment in the audit report to salaries and benefits.
  - c. Finding 6 reduced expenses for the Florida share of \$75,945 in expenses for advertising and meals and entertainment. These expenses included a sponsorship of a cook-off, rodeo tickets, college football tickets, and other items unrelated to the provision of water and wastewater service in Florida. We agree with the adjustment in the staff audit report.
  
6. The general ledger included in the staff audit work papers shows Account 426.6 – Charitable Contributions of \$1,980 is also included in the amounts allocated to the Florida systems. The Commission has a long standing policy of excluding charitable contributions in that if they are treated above-the-line, effectively they become involuntary contributions on behalf of the Company's ratepayers. Therefore, we believe that the allocated portion of these expenses should be removed.
  
7. The general ledger included in the staff audit work papers shows Account 632 – Accounting Fees includes \$197,785.22. The equity sponsor fee issue already addressed \$2,730 of this expense.
  - a. This account also includes an item for \$1,730.19 which is described as a charge for the Shaded Lane system. We believe that this amount should be removed from the amount allocated to the Florida systems.
  - b. Removing the two previous items results in a remaining balance of \$193,325.03, for an amount of \$3,654 allocated to Tamiami and \$13,958 allocated to Hudson. The general ledger describes the expense as the cost for audit and tax preparation. The support provided for this expense includes a contract for an annual audit of the consolidated company as well as the subsidiaries. The contract quotes a price of \$136,000 plus out-of-pocket expenses and travel. We believe that the utility has not fully justified the \$193,000 included in the expense.
  - c. We also believe that the cost incurred by Ni is unreasonable considering the size of the Tamiami and Hudson systems. A brief review of a few other systems in Florida shows the following accounting expenses and the average annual impact on customers. This chart shows that Ni has a much higher cost for accounting. We believe that the accounting expense should be adjusted to a more reasonable level.



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Company	Customers	Accounting Expense	Annual Impact Per Customer
Peoples Water	11,500	\$ 4,240	\$ 0.37
UIF-Pasco	2,900	\$ 5,842	\$ 2.01
Marion	6,100	\$ 23,164	\$ 3.80
Indiantown	1,800	\$ 4,608	\$ 2.56
Tamiami	700	\$ 3,654	\$ 5.22
Hudson	2,600	\$ 13,958	\$ 5.37

- d. We are also concerned with the allocation methodology for this expense. The utility allocated these expenses based on ERCs. However, there appear to be several entities affiliated with Ni that are not included in the ERC allocation calculation. Schedule B-12, Page 2 of 2 lists eight systems in Florida, Texas, and South Carolina. However, the Trial Balance included in the staff audit work papers on WP 12-3 lists at least 15 LLC's and Holding Companies. We believe that the number of these other entities may be a contributing factor to the high cost of the accounting fees if the CPA firm is performing separate audits and preparing separate tax returns for each of these 15 plus systems.
8. The Miscellaneous Expense account includes allocations for Directors fees. The last rate case appears to have included \$100,000 for Directors' Fees. The current test year includes \$238,875 for Directors' Fees. (Total Directors' Fees are \$553,875, but the prior issue on the equity sponsor fee addresses \$315,000 of this amount, leaving a balance of \$238,875.) We believe that this cost is unreasonable considering the size of the Tamiami and Hudson systems and when these costs are added to the salaries for employees and officers it is a burdensome cost for the Florida ratepayers. In addition, it appears that the test year expense includes three Directors compared to one Director in the prior rate case. The increase of \$138,875 is a 138% increase in the 2009 expense. The utility has not justified why this cost should have increased so much since the last rate case, especially considering these difficult economic times when many of the ratepayers in the Florida systems are struggling to live on a limited fixed income. If the parent required additional directors for new responsibilities in other utilities or enterprises, it would appear that the additional costs should be allocated to those other states or enterprises.
9. We are also concerned with the level of direct charges for Hudson for Legal fees and Transportation expense. The chart below shows a listing of these charges. It appears that the utility has held meetings to discuss a possible sale of the system to the Florida Governmental Utility Authority (FGUA). We do not believe that these expenses are recurring and ordinary expenses for the operation of the system. We believe that they should be capitalized and absorbed by the shareholders as part of the cost of any future sale. The expenses listed below should be reviewed and those relating to the possible sale of the system to FGUA or those that are deemed excessive should be removed.

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<b>633 · Contractual Svcs-Legal - Other</b>		
	Davis and Polk Inv for New Borrowing Group Structure and Other Legal	6,256.50
12/02/2011		
	Legal Svcs - Ni America Sale to FGUA (2/23/12 - 3/29/12)	13,501.69
06/01/2012		
	Legal Svcs - Preparing for and traveling to Orlando to meet with FGUA Financial advisor	1,894.00
06/01/2012		
	Legal Svcs - Ni America Sale to FGUA - (5/02/12 - 5/25/12)	988.37
06/15/2012		
	2011 Legal Exp - David Polk Legal Svcs - Ni America Sale to FGUA - (04/16/12 - 4/20/12)	8,479.00
08/13/2012		
		8,027.99
09/01/2012		
Total 633 · Contractual Svcs-Legal - Other		<u>39,147.55</u>
<b>650.202.2 · Transportation Hudson Utilities</b>		
	01/2012 Amex - Wallace (Hudson Corp Travel)	1,922.94
01/31/2012		
	May 2012 Amex - Ed (Travel to Florida for Hudson Mtg w/John)	78.49
05/31/2012		
	06/2012 Visa - Ed (Corp Travel to FL for Hudson Mtg w/John)	1,988.62
06/10/2012		
	July 2012 Visa - Carey (Hudson Corp Travel for Ed)	324.00
07/10/2012		
	July 2012 Visa - Ed (Hudson Corp Travel)	614.10
07/10/2012		
Total 202.2 · Hudson Utilities		<u>4,928.15</u>
<b>650.203.2 · Transportation Hudson Utilities</b>		
	01/2012 Amex - Wallace (Myers Hudson Corp Travel)	578.10
01/31/2012		
Total 203.2 · Hudson Utilities		<u>578.10</u>

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<b>650.208.2 · Transportation Hudson Utilities</b>		
	03/2012 Amex - Andy (Hudson Corp	
03/31/2012	Travel)	356.25
	Rental car, gas, and Lunch on trip to	
05/03/2012	Hudson - (4/30/12 - 5/1/12)	126.71
	May 2012 Amex - Andy (Travel to	
05/31/2012	Florida for Hudson Mtg w/John)	1,047.23
	06/2012 Visa - Ed (Corp Travel to FL	
	for Hudson Mtg w/John - Andy	
06/10/2012	Airfare)	1,270.10
	Hotel and meal for Andy Thomas's	
06/15/2012	trip to Hudson - 5/24/12	300.58
	Parking, Business meals, rental car	
	fuel, car rental for Hudson trip	
07/01/2012	(6/21/12)	495.67
	Mileage and tolls to/from airport for	
07/01/2012	Hudson trip	49.85
	July 2012 Visa - Carey (Hudson	
07/10/2012	Corp Travel for Andy)	324.00
	July 2012 Visa - Ed (Andy Hudson	
07/10/2012	Corp Travel)	614.10
	<b>Total 208.2 · Hudson Utilities</b>	4,584.49
<b>650.214.2 · Transportation Hudson Utilities</b>		
	10/2011 Amex - Rick (Corporate	
10/31/2011	Travel for FL PSC Workshop)	628.06
	03/2012 Amex - Melcher (Corp	
03/31/2012	Travel to Hudson)	566.16
	Mileage to Houston IAH (Tampa) for	
	Hudson septic tank issues -	
05/31/2012	(5/13/12)	183.71
	06/2012 Visa - Rick (Corp Travel to	
06/10/2012	Hudson for FL ops Mtg)	1,714.26
	<b>Total 214.2 · Hudson Utilities</b>	3,092.19
<b>650.235.2 · Transportation Hudson</b>		
07/01/2012	Parking at airport	12.00
	July 2012 Visa - Ed (Adam Hudson	
07/10/2012	Corp Travel)	642.10
	<b>Total 235.2 · Hudson</b>	654.10
	<b>Total Hudson Direct Travel</b>	13,837.03